

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MICHAEL MILES,)	
)	
Plaintiff,)	Case No. 5:20-cv-10538
v.)	
)	
Mid Pine Golf L.L.C., a Michigan limited)	Judge:
liability company,)	
)	
Defendant.)	
)	
)	

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Plaintiff, Michael Miles, individually, by and through the undersigned counsel, Owen B. Dunn, Jr. and Valerie J. Fatica, Co-Counsel for Plaintiff, hereby files this Complaint against Defendant, Mid Pine Golf L.L.C., a Michigan limited liability company, for injunctive relief, damages, attorneys' fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* ("ADA"), alleging as follows:

JURISDICTION AND VENUE

1. This action is brought by the Plaintiff, Michael Miles, individually, and on behalf of individuals similarly situated, pursuant to the enforcement provision of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. § 12188(a), against the Defendant as delineated herein.
2. The Court has jurisdiction pursuant to the following statutes: 28 U.S.C. § 1331, which governs actions that arise from the Defendant's violations of Title III of the ADA, 42 U.S.C. § 12181, *et seq.*; 28 U.S.C. § 1331, which gives the District Courts original jurisdiction over civil actions arising under the Constitution, laws, or treaties of the

United States; 28 U.S.C. § 1343(3) and (4), which gives District Courts jurisdiction over actions to secure civil rights extended by the United States government; and 28 U.S.C. § 1367, as Count II utilizes the same core of operative facts as Count I, and is therefore subject to supplemental jurisdiction.

3. Venue is proper in the Eastern District of Michigan as venue lies in the judicial district of the property *situs*. The Defendant's property and operations complained of by Plaintiff are located in this judicial district, where the business of public accommodation is conducted, including the acts complained of herein.

PARTIES

4. Plaintiff, Michael Miles ("Plaintiff" or "Mr. Miles"), is an Ohio resident, is *sui juris*, and qualifies as an individual with disability as defined by the ADA, 42 U.S.C. § 12102(2), 28 C.F.R. 36.104.
5. Mid Pine Golf L.L.C.'s place of public accommodation, a driving range and golf shop commonly known as Miles of Golf, is located at 3113 Carpenter Rd, Ypsilanti, MI 48197 in Washtenaw County. Plaintiff has patronized Defendant's facility and the businesses located therein as a place(s) of public accommodation.
6. Upon information and belief, the driving range and golf shop owned and operated by Defendant is non-compliant with the remedial provisions of the ADA. As Defendant owns, leases, leases to, or operates a place of public accommodation as defined by the ADA and the regulations implementing the ADA, 28 CFR 36.201(a) and 36.104, Defendant is responsible for complying with the obligations of the ADA. Defendant's facility as a driving range and retail golf shop, which constitutes a place of public accommodation, fails to comply with the ADA and its regulations, as also described

further herein.

7. Mr. Miles is a paraplegic and permanently uses a wheelchair for mobility. As such, he is substantially limited in performing one or more major life activities, including but not limited to, standing and walking, as defined by the ADA and its regulations thereto.
8. Mr. Miles is a Hancock County, Ohio resident. He visits Southeast Michigan and the surrounding area for golf and visiting friends several times annually. Michael Miles is an avid and accomplished adaptive golfer and has visited and been a retail customer at the golf shop which forms the basis of this lawsuit and plans to return to the property to avail himself of the goods and services offered to the public at the property. Additionally, the Defendant operates a destination retailer in the area as it is one of the top club fitting facilities in the country and Mr. Miles was here to fit clubs for his son who is a competitive junior golfer. The Plaintiff has encountered architectural barriers at the subject property. The barriers to access at the property have endangered his safety.
9. On previous occasions, most recently December 28, 2019, Plaintiff has patronized the Defendant's property, submitted to club fittings for him and his son, and made retail purchases at the store. He plans to return to the property to avail himself of the goods and services offered to the public at the property.
10. Completely independent of the personal desire to have access to this place of public accommodation free of illegal barriers to access, Plaintiff also acts as a "tester" for the purpose of discovering, encountering, and engaging discrimination against the disabled in public accommodations. When acting as a "tester," Plaintiff employs a routine practice. Plaintiff personally visits the public accommodation; engages all of the barriers to access, or at least all of those that Plaintiff is able to access; and tests all of those barriers to

access to determine whether and the extent to which they are illegal barriers to access; proceeds with legal action to enjoin such discrimination; and subsequently returns to the premises to verify its compliance or non-compliance with the ADA and to otherwise use the public accommodation as members of the able-bodied community are able to do. Independent of other visits, Plaintiff also intends to visit the premises annually to verify its compliance or non-compliance with the ADA, and its maintenance of the accessible features of the premises. In this instance, Plaintiff, in Plaintiff's individual capacity and as a "tester," visited the Facility, encountered barriers to access at the Facility, and engaged and tested those barriers, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access and the ADA violations set forth herein.

11. Plaintiff has a realistic, credible, existing and continuing threat of discrimination from the Defendant's non-compliance with the ADA with respect to this property as described but not necessarily limited to the allegations contained in this complaint. Plaintiff has reasonable grounds to believe that he will continue to be subjected to discrimination in violation of the ADA by the Defendant. Plaintiff desires to visit the Defendant's place of business again on future occasions, not only to avail himself of the goods and services available at the property but to assure himself that this property is in compliance with the ADA so that he and others similarly situated will have full and equal enjoyment of the driving range and golf shop and its amenities without fear of discrimination.
12. The Defendant has discriminated against the individual Plaintiff by denying him access to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of the buildings, as prohibited by 42 U.S.C. § 12182 *et seq.*

13. The Defendant has discriminated, and is continuing to discriminate, against the Plaintiff in violation of the ADA by failing to, *inter alia*, have accessible facilities by January 26, 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less).
14. A preliminary inspection of the driving range and golf shop owned by Defendant has shown that many violations of the ADA exist, whose remedy is readily achievable. These violations include, but are not limited to:

Parking

- A. There are a legally an insufficient number of designated accessible parking spaces, in violation of the ADA whose remedy is readily achievable.
- B. Designated accessible parking spaces lack required signage, in violation of the ADA whose remedy is readily achievable.
- C. There are no designated van accessible parking spaces, in violation of the ADA whose remedy is readily achievable.
- D. There are cracks and changes in level on the surface of the designated accessible parking spaces, in violation of the ADA whose remedy is readily achievable.

Accessible Routes

- E. The accessible route from the designated accessible parking to the retail entrance has an excess slope and cross slope, in violation of the ADA whose remedy is readily achievable.
- F. There are cracks and changes in level in excess of 1/4 inches on the accessible route, in violation of the ADA whose remedy is readily achievable.
- G. There is no accessible route from the existing designated accessible parking to the retail entrances partly due to cracks and changes in level and a curb ramp with excess cross-slope and a change in level at the terminus of the ramp, in violation of the ADA whose remedy is readily achievable.

Restrooms

- H. The men's restroom door contains hardware that requires tight grasping or twisting to

operate, in violation of the ADA whose remedy is readily achievable.

- I. The men's restroom toilet paper dispenser is not located as required, in violation of the ADA whose remedy is readily achievable.
- J. There is no rear grab bar around the water closet in the men's restroom, in violation of the ADA whose remedy is readily achievable.
- K. The coat hooks in the men's restroom are mounted above allowable reach range, in violation of the ADA whose remedy is readily achievable.
- L. The men's restroom lavatory lacks required knee and toe clearance, in violation of the ADA whose remedy is readily achievable.
- M. The mirror in the men's restroom is mounted so that its reflective surface is over 40 inches from the finish floor, in violation of the ADA whose remedy is readily achievable.
- N. Upon information and belief, the women's restroom contains similar barriers to accessibility, in violation of the ADA whose remedy is readily achievable.

Policies and Procedures

- O. The Defendant lacks or has inadequate defined policies and procedures for the benefit and assistance of disabled patrons and guests.
15. The discriminatory violations described in Paragraph 14 by Defendant are not an exclusive list of the ADA violations at the place of public accommodation owned and operated by Defendant. Plaintiff requires further inspection of the Defendant's place of public accommodation in order to photograph and measure all of the discriminatory acts violating the ADA and all of the barriers to access. The Plaintiff, has been denied access to Defendant's accommodations; benefit of services; activities; and has otherwise been discriminated against and damaged by the Defendant, as set forth above. The individual Plaintiff, and all others similarly situated will continue to suffer such discrimination, injury and damage without the immediate relief provided by the ADA as requested herein. In order to remedy this discriminatory situation, the Plaintiff requires an

inspection of the Defendant's place of public accommodation in order to determine all of the areas of non-compliance with the Americans with Disabilities Act.

COUNT I
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

16. Plaintiff restates the allegations of ¶¶1-15 as if fully rewritten here.
17. The facility at issue, as owned by Mid Pine Golf L.L.C. is a public accommodation and service establishment, and as such, must be, but is not, in compliance with the Americans with Disabilities Act ("ADA") or Americans with Disabilities Act Accessibility Guidelines ("ADAAG").
18. Plaintiff was unlawfully denied full and equal enjoyment of the goods, services, facilities, privileges, and advantages of the property on the basis of disability due to Defendant's failure to comply with Title III of the Americans with Disabilities Act and its accompanying regulations, as prohibited by 42 U.S.C. § 12182, *et seq.* Defendant will continue to discriminate against Plaintiff and others with disabilities unless and until Defendant is compelled to remove all physical barriers that exist at the facility, including those specifically set forth herein, and make the facility accessible to and usable by persons with disabilities, including Plaintiff.
19. The Plaintiff, and others similarly-situated, is presently without adequate remedy at law and is damaged by irreparable harm. Plaintiff reasonably anticipates that he will continue to suffer irreparable harm unless and until Defendant is required to remove the physical barriers, dangerous conditions, and ADA violations that exist at the Facility, including those set forth herein.
20. Pursuant to 42 U.S.C. §12187, Plaintiff requests that the Court issue an injunction requiring Defendant to make such readily achievable alterations as are legally required to

provide full and equal enjoyment of the goods, services, facilities, privileges, and advantages on its property to disabled persons. In connection with that relief, Plaintiff requests reasonable attorney's fees and costs of maintaining this action.

COUNT II
VIOLATION OF MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT
M.C.L. § 37.1301 *et seq.*

21. Plaintiff restates the allegations of ¶¶1 - 20 as if fully rewritten here.
22. Defendant Mid Pine Golf L.L.C.'s golf retail shop, fitting and driving range facilities are a "place[s] of public accommodation" pursuant to M.C.L §37.1301(a).
23. Defendant committed an unlawful act pursuant to M.C.L §37.1302(a) by denying Plaintiff the full enjoyment of its goods, services, accommodations, advantages, facilities, or privileges.
24. Pursuant to M.C.L §37.1606, Plaintiff is entitled to compensatory and applicable damages, Attorneys' fees and costs, in an amount to be determined at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full and equal enjoyment of its goods, services, facilities, privileges, and advantages to disabled persons.

WHEREFORE, Plaintiff demands,

For **COUNT I**, an injunction requiring Defendant to make all readily achievable alterations and institute policies and procedures to allow full and equal enjoyment of the goods, services, facilities, privileges, and advantages to disabled persons, and the reasonable attorneys fees and costs of maintaining this action; and,

For **COUNT II**, compensatory and exemplary damages, attorneys fees and costs, in an amount to be determined at trial, but in any event not less than \$25,000.00, as well as

issuance of an injunction requiring Defendant to allow full and equal enjoyment of the goods, services, facilities, privileges, and advantages to disabled persons.

Respectfully Submitted,

Counsel for Plaintiff:

/s/ Owen B Dunn Jr.

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